

REMARKS

These remarks are responsive to the Office Action mailed March 11, 2010. Currently, claims 17, 22, 23, 26-31, 34, 37 and 58-77 are pending with claims 17, 58 and 72 are independent. Claim 17 has been amended to include the features of dependant claims 38 and 39 which have been cancelled.

Applicant respectfully requests reconsideration of the present application in view of the following remarks. No new matter has been added.

Claim Rejections under 35 U.S.C. § 102

In the Office Action, Claims 17, 22, 23, 26, 34, 37-39 and 66-68 were rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by U.S. Patent 2,623,517 to Barlow et al. (hereinafter, "Barlow"). Applicant respectfully disagrees and traverse this rejection.

Claim 17, as amended, recites, *inter alia*, a surgical instrumentation system to provide a surgical approach to a patient's spine, comprising: a frame including multiple portions lying in at least one plane; wherein said frame includes a first portion lying in a first plane and a second portion lying in a second plane that is transversely oriented to the first plane; and a plurality of retractors attachable to said frame portions, each of said retractors including a blade portion extending transversely to said at least one plane when attached thereto, said blade portion including a tissue contacting surface adapted to contact and retract tissue from the surgical approach; wherein one or more of said retractors is attachable to said first portion and one or more of said retractors is attachable to said second portion; and at least one adjustment mechanism engageable with at least one of said retractors, wherein said at least one adjustment mechanism includes a shaft within a securement device pivotally coupled with said at least one of said retractors at a pivoting coupling location adjacent a proximal end of said at least one of said retractors, said pivoting coupling location toward said frame portions and said securement device movable along said frame portions, the securement clamping device operable to engage said adjustment mechanism to said frame portions.

As understood by Applicant, Barlow discloses a surgical retractor comprising an arrangement of individual retractor or holding units independently manipulable and adjustable. (Barlow, column1, lines 1-7).

Independent claim 17, and its dependant claims, is patentable over Barlow because Barlow does not disclose all the elements of each claim as stated by Applicant and as amended. The Office Action states that Barlow discloses an adjustment mechanism 18, however, 18 is defined and described by Barlow as a “head” with no further description or feature explanation. Barlow’s “head” is not similar to an adjustment mechanism. Additionally, the “head” does not include a shaft; and it is not engageable with a retractor. Features of former claims 38 and 39 have been amended into claim 17. The Office Action has previously indicated that Fig.1 illustrates that the frame of the retractor lies in more than one plane as claimed by Applicant. Applicant respectfully disagrees and states that it is obvious from Fig. 1 that the Barlow’s frame is uniplanar, not having portions lying in two different planes as claimed by Applicant. Barlow also does not disclose a frame with a second plane that is transversely oriented to the first plane nor one or more retractors attachable to the first portion and one or more of said retractors is attachable to the second portion. Barlow’s frame and retractors are all taught to be attached to the frame lying completely in one plane. Therefore, Barlow does not teach or disclose these features of claim 17 as amended.

As to claims 22, 23 and 26, as mentioned above, feature 18 of Barlow is described merely as a “head,” not as an adjustment mechanism. Barlow’s “head” does not have an adjustment handle, or a shaft assembly. Therefore, Barlow does not teach or disclose the features of these claims.

As to claim 34, the Office Action points out a “tissue contacting surface” in Barlow, but provides no support in Barlow for the remainder of the claim, “and an opposite second side configured to accommodate and support surgical instruments,” which is not disclosed in Barlow. Applicant respectfully requests that the Office Action shown on the record where in Barlow support for the last feature of this claim is to be found.

As to claims 37, Gauthier does not disclose the features of amended independent claim 17, on which this claim depends, and claim 37 is therefore allowable.

Claims 38 and 39 have been cancelled.

As to claims 66 and 67, the Office Action has indicated that Fig. 1 illustrates Applicant's claimed features of operative locations of the frame and the retractors as being caudal, medial, cephalad. However, none of Barlow's figures offer any indication of where the frame or retractors are to be located. Barlow simply does not teach or disclose this feature.

As to claim 68, the Office Action has stated that Barlow's feature 19 illustrates a "bracket coupled to the frame and configured to attach to the surgical table." However, Barlow simply describes feature 19 as a "terminal loop," in no way disclosing that this feature is meant to be attached to a surgical table. Therefore, Barlow does not teach or disclose this feature.

Independent claim 17 and its corresponding dependant claims are not anticipated by Barlow for at least the reasons stated above. Based upon the above reasoning, the Office Action is requested to reconsider and withdraw this rejection of these claims.

In the Office Action, Claims 17, 22, 23, 26-31, 34, 37-39 and 58-77 were rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by U.S. Patent 3,965,890 to Gauthier et al. (hereinafter, "Gauthier"). Applicant respectfully disagrees and traverses this rejection.

Claim 17, as amended, recites, *inter alia*, a surgical instrumentation system to provide a surgical approach to a patient's spine, comprising: a frame including multiple portions lying in at least one plane; wherein said frame includes a first portion lying in a first plane and a second portion lying in a second plane that is transversely oriented to the first plane; and a plurality of retractors attachable to said frame portions, each of said retractors including a blade portion extending transversely to said at least one plane when attached thereto, said blade portion including a tissue contacting surface adapted to contact and retract tissue from the surgical approach; wherein one or more of said retractors is attachable to said first portion and one or more of said retractors is attachable to said second portion; and at least one adjustment mechanism engageable with at least one of said retractors, wherein said at least one adjustment mechanism includes a shaft within a securement device pivotally coupled with said at least one of said retractors at a pivoting coupling location adjacent a proximal end of said at least one of said retractors, said pivoting coupling location toward said frame portions and said securement

device movable along said frame portions, the securement clamping device operable to engage said adjustment mechanism to said frame portions.

As understood by Applicant, Gauthier discloses a surgical retractor comprising a frame on which a plurality of retractor arm mounting members are mounted for movement along the frame, retractor arms carried by the mounting members for movement of the arms transversely of the frame, and collapsible and extensible retractor blades are carried by the arms. The retractor blades include a plurality of blade sections having interengagable stops thereon to limit extension of the sections, and the stops are selectively movable to inoperative position to enable disassembly of the blade sections. (Gauthier, abstract).

Independent claims 17 and its dependant claims are patentable over Gauthier because Gauthier does not disclose all the elements of each claim as stated by Applicant and as amended. Features of former claims 38 and 39 have been amended into claim 17. Gauthier does not disclose a frame with a second plane that is transversely oriented to the first plane nor one or more retractors attachable to the first portion and one or more of said retractors is attachable to the second portion. Gauthier's frame and retractors are all taught to be attached to the frame lying completely in one plane. Therefore, Barlow does not teach or disclose these features of claim 17 as amended.

As to claims 22-29, Gauthier does not disclose the feature of amended independent claim 17, on which these claims depend, and they are therefore allowable.

As to claim 30, the Office Action states that Gauthier's feature M is a "plate," however, the Office Action had stated earlier for claim 28, that Gauthier's element M, was likened to Applicant's shaft feature. Applicant respectfully states that Gauthier's element M can not be considered both a shaft and a plate. Also, the Office Action has stated that Applicant's flange feature is disclosed as Gauthier's element 54, however, Gauthier's element 54 is merely described as a lever, which is no way like Applicant's flange which is a important feature of Applicant's sophisticated adjustment mechanism. Therefore Gauthier does not disclose the features of this claim.

As to claim 31, Gauthier does not disclose a pair of flanges wherein each pair of proximal flanges includes an arcuate slot. As discussed above with respect to claim 30, Gauthier does not

disclose proximal flanges and therefore does not disclose proximal flanges with an arcuate slot. Therefore Gauthier does not disclose the features of this claim.

As to claim 34, the Office Action points out a “first side defining a tissue contacting surface” in Gauthier, but provides no support in Gauthier for the remainder of the claim, “and an opposite second side configured to accommodate and support surgical instruments positioned therealong,” which is not disclosed in Gauthier. Gauthier does not disclose the feature of this claim.

As to claim 58, the Office Action has stated that Applicant’s flange feature is disclosed as Gauthier’s element 58, however, Gauthier’s element 58 is merely described as “the proximal end of the arm,” or the end of the arm element, and is no way like Applicant’s flange which is a feature of Applicant’s sophisticated adjustment mechanism. Also, as discussed above with respect to claim 30, Gauthier does not disclose a pair of plates. Therefore Gauthier does not disclose the features of this claim.

As to claim 59, as discussed above with respect to claim 30, Gauthier does not disclose proximal flanges and therefore does not disclose proximal flanges with an arcuate slot. Therefore Gauthier does not disclose the features of this claim.

As to claims 60 and 61, Gauthier does not disclose the feature of amended independent claim 17, on which these claims depend, and are therefore allowable.

As to claims 62-67, Gauthier does not disclose a retractor with at least a first portion and a second portion. Gauthier’s retractor is only taught as “one-piece frame” with no discernable portions (see Gauthier column 4, line 8) as claimed by Applicant. Therefore Gauthier does not disclose the features of these claims.

As to claim 68, the Office Action has stated that Gauthier’s feature 58 is likened to Applicant’s “bracket,” however, the Office Action had stated earlier for claim 58, that Gauthier’s element 58, was likened to Applicant’s flange feature. Applicant respectfully states that Gauthier’s element 58 can not be considered both a flange and a bracket since Applicant defines these as two separate features. Therefore Gauthier does not disclose the features of this claim.

As to claims 69 and 70, the Office Action has indicated that Fig. 1 illustrates Applicant’s claimed features of operative locations of the frame and the retractors as being caudal, medial,

cephalad. However, none of Gauthier's figures teach or disclose offer any indication of where the frame or retractors are to be located. Gauthier simply does not teach or disclose this feature.

As to claim 71, the Office Action has stated that Applicant's bracket feature is disclosed as Gauthier's element 58, however, Gauthier's element 58 is merely described as "the proximal end of the arm," or the end of the arm element, and is no way like Applicant's bracket which is a feature of Applicant's adjustment mechanism. Also, the Office Action had stated earlier for claim 58, that Gauthier's element 58, was likened to Applicant's flange feature. Applicant respectfully states that Gauthier's element 58 can not be considered both a flange and a bracket since Applicant defines these as two separate features. Therefore Gauthier does not disclose the features of this claim.

As to claims 72 and 73, Gauthier does not disclose a retractor with at least a first portion and a second portion. Gauthier's retractor is only taught as "one-piece frame" with no discernable portions (see Gauthier column 4, line 8) as claimed by Applicant. Also, Gauthier does not disclose "retractors being secured to said first portion of said frame and extending transversely to said first portion and at least one other of said retractors being secured to said second portion of said frame and extending transversely to said second portion" since Gauthier does not disclose particular portions of the frame. Therefore Gauthier does not disclose the features of these claims.

As to claim 74, Gauthier does not disclose the feature of amended independent claim 17, on which these claims depend, and is therefore allowable.

As to claims 75 and 76, the Office Action points out a "first side defining a tissue contacting surface" in Gauthier, but provides no support in Gauthier for the remainder of the claim, "and an opposite second side configured to accommodate and support surgical instruments positioned," which is not disclosed in Gauthier. Gauthier does not disclose the feature of this claim.

As to claim 77, the Office Action has stated that Applicant's bracket feature is disclosed as Gauthier's element 58, however, Gauthier's element 58 is merely described as "the proximal end of the arm," or the end of the arm element, and is no way like Applicant's bracket which is a feature of Applicant's adjustment mechanism. Also, the Office Action had stated earlier for

claim 58, that Gauthier's element 58, was similar to Applicant's flange feature. Applicant respectfully states that Gauthier's element 58 can not be considered both a flange and a bracket since Applicant defines these as two separate features. Therefore Gauthier does not disclose the features of this claim.

Independent claims 17, 58 and 72, and their corresponding dependant claims, are not anticipated by Gauthier for at least the reasons stated above. Based upon the above reasoning, the Office Action is requested to reconsider and withdraw this rejection of these claims.

CONCLUSION

In view of the foregoing, Applicant believes all claims now pending in this Application are in condition for allowance. The issuance of a formal Notice of Allowance at an early date is respectfully requested.

The Commissioner is hereby authorized to charge any additional fees associated with this paper, or credit any overpayment, to Deposit Account No. 50-4978.

If the Office Action believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 760-494-6648.

Respectfully submitted,
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